



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2013-0293]

RIN 1625-AA11

Regulated Navigation Area; Slip 4 Early Action Area Superfund Site, Lower Duwamish Waterway, Seattle, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard proposes to establish a regulated navigation area (RNA) on a portion of the Lower Duwamish Waterway in Seattle, Washington. The RNA will protect the riverbed in the U.S. Environmental Protection Agency (EPA)'s Slip 4 Early Action Area (EAA). This RNA would prohibit activities that could disrupt the integrity of the engineered sediment and slope caps that have been placed within the Slip 4 EAA. These activities include vessel grounding, anchoring, dragging, trawling, spudding or other such activities that would disturb the riverbed. It will not affect transit or navigation of this area.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number

using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail or Delivery: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202-366-9329.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail LTJG Nathaniel Clinger, Waterways Management Division, Sector Puget Sound, U.S. Coast Guard; telephone (206) 217-6045, e-mail SectorPugetSoundWWM@uscg.mil. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at <http://www.regulations.gov>, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number [USCG-2013-0293] in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit

them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number (USCG-2013-0293) in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a

Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

4. Public meeting

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under ADDRESSES. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

B. Regulatory History and Information

The Coast Guard received notice from the U.S. EPA on 28 February, 2013, requesting the establishment of an RNA for Slip 4 EAA located in the Lower Duwamish Waterway Superfund Site, Seattle, Washington. This request was received as a result of the need to protect the riverbed in the Lower Duwamish Waterway (LDW) from activities that could disrupt the integrity of the engineered sediment and slope caps that have been placed within the Slip 4 EAA to isolate underlying contaminated sediments.

The LDW was added to the U.S. EPA's National Priorities List (Superfund) in September 2001 because of hazardous substance contamination in sediments. Slip 4 was subsequently identified by the EPA and the Washington Department of Ecology as EAA within the LDW, based primarily on elevated concentrations of

polychlorinated biphenyls (PCBs). Slip 4 EAA cleanup activities were conducted pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), under U.S. EPA's non-time-critical removal action (NTCRA) authority. In May 2006, U.S. EPA issued an Action Memorandum containing its removal action decision for the Slip 4 EAA. The Slip 4 EAA removal action was conducted by the City of Seattle (City) under an administrative settlement agreement and order on consent (ASAO), CERCLA Docket No. 10-2006-0364.

The selected removal action required dredging, excavation, and offsite disposal of 17,202 tons of contaminated sediment, shoreline, soil, and creosote-treated timber piles and other debris, and placement of engineered sediment and slope caps throughout the EAA (approximately 3.43 acres) to isolate residual sediment contamination within the EAA. In addition, the removal action included demolition and removal/recycling of a portion of an aging concrete pier and supporting piling on the northwest bank of the slip, and creation of two intertidal beach areas and other shallow-water areas to improve habitat conditions in the slip. Construction activities were initiated in October 2011 and completed in February 2012. A Removal Action Completion Report documenting the cleanup activities was completed and approved by the U.S. EPA in July 2012.

C. Basis and Purpose

Coast Guard District Commanders are granted authority under

33 CFR 165.11 to regulate vessel traffic in areas with hazardous conditions. This rule is necessary to prevent disturbance of the Slip 4 EAA sediment and slope caps. Disruption of the caps may result in a hazardous condition and harm to the marine environment. As such, this RNA is necessary to protect the caps and will do so by prohibiting maritime activities that could disturb or damage them. This RNA is similar to RNAs which protect other caps in the area. Enforcement of this RNA will be managed by Coast Guard Sector Puget Sound assets including Vessel Traffic Service Puget Sound through radar and closed circuit television sensors. The Captain of the Port Puget Sound may also be assisted by other state, local, or government agencies in the enforcement of this rule.

D. Discussion of Proposed Rule

The Coast Guard proposes to establish a permanent RNA in the LDW to protect the sediment and slope caps in the Slip 4 EAA, Superfund Site (EPA ID No. WA0002329803). It would do so by restricting anchoring, dragging, trawling, spudding or other activities that could disrupt the integrity of the caps and the underlying contaminated sediments located in the proposed RNA.

E. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This expectation is based on the fact that the RNA established by the rule would encompass a small area that should not impact commercial or recreational traffic, and the prohibited activities are not routine for the designated areas.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which may be small entities: the owners or operators of vessels intending to anchor, drag, dredge, trawl, spud, or disturb the riverbed in any fashion when this rule is in effect. The RNA would not have a significant economic impact on small entities due to its minimal restrictive area and the opportunity for a waiver to be granted for any legitimate use of the riverbed.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and

the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children from Environmental Health Risks

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This proposed rule was determined to have potential tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it regulates navigation on waters subject to treaty fishing rights held by Indian Tribal Governments. The Coast Guard and EPA consulted with the Muckleshoot and Suquamish Tribes. To accommodate treaty fishing activity in usual and accustomed places, which fall within the area covered by the sediment cap, the Coast Guard

included an exception for treaty fishing activity by Indian Tribes holding such fishing rights.

12. Energy Effects

This proposed rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a regulated navigation area which prevents activities which would disturb the riverbed within the areas outlined in this regulation. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the

docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

33 CFR Part 165

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T13-246 to read as follows:

§ 165.T13-246 Regulated Navigation Area; Slip 4 Early Action Area Superfund Site, Lower Duwamish Waterway, Seattle, WA

(a) Regulated Areas. The following areas are regulated navigation areas: All waters within the northern portion of Slip 4 bounded by the shoreline and the southern boundary of the EAA defined as the line beginning at a point on the shore at 47° 32' 08.47"N, 122° 19' 12.00"W; thence southeast to a point on the

shoreline at 47° 32' 07.02"N, 122° 19' 09.23"W [Datum: NAD 1983/91].

(b) Regulations. (1) All vessels and persons are prohibited from grounding, anchoring, dragging, trawling, spudding, or otherwise contacting the riverbed within the designated regulated navigation area. Vessels may otherwise transit or navigate within this area in accordance with the Navigation Rules.

(2) The prohibition described in paragraph (b) (1) of this section does not apply to vessels or persons engaged in activities associated with remediation efforts in the superfund sites, provided that the Captain of the Port, Puget Sound (COTP), is given advance notice of those activities by the EPA.

(3) The prohibition described in paragraph (b) (1) of this section does not apply to vessels or person engaged in fishing activities pursuant to fishing rights held by treaty with the United States.

(c) Waivers. Upon written request stating the need and proposed conditions of the waiver, and any proposed precautionary measures, the COTP may authorize a waiver from this section if the COTP determines that the activity for which the waiver is sought can take place without undue risk to the remediation efforts described in paragraph (b) (1) of this section. The COTP will consult with EPA in making this determination when necessary and practicable.

Dated: February 26, 2014.

R.T. Gromlich,

Rear Admiral, U. S. Coast Guard,
Commander, Thirteenth Coast Guard District.

[FR Doc. 2014-07834 Filed 04/21/2014 at 8:45 am; Publication

Date: 04/22/2014]